



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Board of Physical Therapy - Department of Health Professions
VAC Chapter Number:	18 VAC 112-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Physical Therapy
Action Title:	Periodic review
Date:	

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The board is recommending amendments to its regulations for the licensure of physical therapists and physical therapist assistants in order to clarify and update educational, examination and practice requirements. Substantive changes include: the elimination of the prohibition on licensure after six failed attempts to pass the national examination; inclusion of a requirement for additional clinical training or course work to sit for the examination after three failures; and acceptance of documentation of active practice for seven years with an unrestricted license if the examination taken for initial licensure is not identical to the examination required in Virginia.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory

or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
- 8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
- 9. To take appropriate disciplinary action for violations of applicable law and regulations.*

10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

Chapter 34.1 of Title 54.1 sets forth statutory provisions for the licensure and practice of physical therapists, excerpts of which are listed below:

§ 54.1-3473. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Physical Therapy.

"Physical therapist" means any person licensed by the Board to engage in the practice of physical therapy.

"Physical therapist assistant" means any person licensed by the Board to assist a physical therapist in the practice of physical therapy.

"Practice of physical therapy" means that branch of the healing arts that is concerned with, upon medical referral and direction, the evaluation, testing, treatment, reeducation and rehabilitation by physical, mechanical or electronic measures and procedures of individuals who, because of trauma, disease or birth defect, present physical and emotional disorders. The practice of physical therapy also includes the administration, interpretation, documentation, and evaluation of tests and measurements of bodily functions and structures within the scope of practice of the physical therapist. However, the practice of physical therapy does not include the medical diagnosis of disease or injury, the use of Roentgen rays and radium for diagnostic or therapeutic purposes or the use of electricity for shock therapy and surgical purposes including cauterization.

§ 54.1-3474. Unlawful to practice without license; continuing competency requirements.

- A. It shall be unlawful for any person to practice physical therapy or as a physical therapist assistant in the Commonwealth without a valid unrevoked license issued by the Board.*
- B. The Board shall promulgate regulations establishing requirements to ensure continuing competency of physical therapists and physical therapist assistants, which may include continuing education, testing, or such other requirements as the Board may determine to be necessary.*
- C. In promulgating continuing competency requirements, the Board shall consider (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.*
- D. The Board may approve persons who provide or accredit programs to ensure continuing competency.*

§ 54.1-3477. Requirements for licensure as a physical therapist.

An applicant for licensure as a physical therapist shall submit evidence, verified by affidavit and satisfactory to the Board, that the applicant:

- 1. Is eighteen years of age or more;*
- 2. Is a graduate of a school of physical therapy approved by the American Physical Therapy Association or is a graduate of a school outside of the United States or Canada which is acceptable to the Board; and*
- 3. Has satisfactorily passed an examination approved by the Board.*

§ 54.1-3478. Requirements for licensure as a physical therapist assistant.

An applicant for licensure as a physical therapist assistant shall submit evidence, verified by affidavit and satisfactory to the Board, that the applicant:

- 1. Is eighteen years of age or more;*
- 2. Is a graduate of a two-year college-level education program for physical therapist assistants acceptable to the Board; and*
- 3. Has satisfactorily passed an examination approved by the Board.*

§ 54.1-3479. Licensure by examination or endorsement; traineeships.

A. The Board shall provide for the examinations to be taken by applicants for licensure as physical therapists and physical therapist assistants. The Board shall, on the basis of such examinations, issue or deny licenses to applicants to practice physical therapy or perform the duties of a physical therapist assistant. Any applicant who feels aggrieved at the result of his examination may appeal to the Board.

B. The Board, in its discretion, may issue licenses to applicants upon endorsement by boards of other appropriate authorities of other states or territories or the District of Columbia with which reciprocal relations have not been established if the credentials of such applicants are satisfactory and the examinations and passing grades required by such other boards are determined to be equivalent to those required by the Virginia Board.

C. The Board, in its discretion, may provide for the limited practice of physical therapy by a graduate physical therapist or physical therapist assistant enrolled in a traineeship program as defined by the Board under the direct supervision of a licensed physical therapist.

D. In granting licenses to out-of-state applicants, the Board may require physical therapists or physical therapist assistants to meet the professional activity requirements or serve traineeships according to regulations promulgated by the Board.

The Office of the Attorney General has certified by letter that the Board has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

With the creation of an independent Board of Physical Therapy in 2000, the regulations that had been in effect under the Board of Medicine were adopted by the new board with only minor revisions. With three years of experience in applying these regulations, the Board has determined that some of its requirements need to be more consistent with national standards in the practice of physical therapy, need to be clarified to facilitate compliance by licensees, or need to be modified to reduce the burden of compliance.

For example, there have been questions as to whether “active practice,” which is required to maintain a license, could include non-clinical duties related to physical therapy. By defining the term to be more inclusive, it will be less burdensome for active practitioners and those seeking licensure by endorsement. Persons seeking licensure by endorsement, who would otherwise not qualify under current regulations, may be able to become licensed based on years of experience without disciplinary action. Persons seeking licensure by examination, who have failed the national examination at least six times, are not denied the opportunity to become licensed if they complete remediation and ultimately pass the examination.

While the practice and referral requirements are largely set out in the Code of Virginia, which was amended by the 2003 General Assembly, the Board has identified several areas in which amendments would be clarifying or necessary for consistency with current standard of care. From patient evaluation to supervision, the Board has attempted to clarify that the role of the physical therapist should be to evaluate the patient, have ongoing involvement in the care of a patient, continuous communication with an assistant about the treatment of a patient, and ultimate responsibility for such care and treatment. Amendments proposed by the Board are intended to improve access to physical therapy by patients in Virginia and to more specifically state the appropriate responsibility of the PT and the PTA in the care of a patient consistent with the goal of protecting the health, safety and welfare of the public. Regulations that are more specific about the role and responsibility of the physical therapist to evaluate a patient, plan for his treatment and remain involved in his care will better ensure that patients are receiving appropriate treatment by qualified licensees.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

Substantive changes to sections of these regulations include:

Definitions: A revised definition of “active practice” will expand the scope of that term to include non-clinical physical therapy related activities and to reduce confusion by specifying the active practice means 160 hours within the 24 month period preceding renewal. Other revised definitions to clarify the responsibility and scope of “direct supervision”, an “evaluation” and the practice of “support personnel.”

Licensure requirements: Graduates of non-approved programs outside the U.S. are currently required to have certification from the FCCPT, which requires passage of the TOEFL and the TSE examinations. To ensure that foreign-trained graduates of approved PT programs and applicants for licensure as a PTA can adequately communicate with their patients, the Board proposes to require the TSE in addition to the TOEFL.

The prohibition on licensure for anyone who fails the national examination six times has been eliminated. Instead, an applicant who fails three times must submit evidence of successfully completing clinical training or course work in the areas of deficiency prior to being approved to try the examination for a fourth time.

Requirements for licensure by endorsement have been restated to allow an applicant to be licensed if he can show proof of passing an examination required by another state at the time of initial licensure and active practice for at least seven years. In current regulations, the examination requirements for endorsement are confusing; in one place it requires the applicant to pass an examination equivalent to the examination required in Virginia at the time of initial licensure (which may be a state exam), and in another place, it requires passage of the national examination.

Practice requirements: The responsibility of the physical therapist to perform the initial evaluation, periodic reevaluation and an evaluation prior to discharge is clearly stated to avoid confusion and assist therapists and assistants in their understanding of their appropriate roles in the care and treatment of patients. Physical therapist assistants may perform components of physical therapy, but the PT is fully responsible for the evaluation and overall care of the patient and for having ongoing involvement in the patient’s care. Current regulations state the responsibility of the therapist to communicate with the referring doctor, but the revised regulations expand that responsibility to include communication with the patient and the assistant, as well as other referring practitioners, including nurse practitioners and physician assistants.

The supervisory responsibilities of physical therapists and physical therapist assistants are amended to more clearly delineate the role of each level of practitioner. The term “nonlicensed” personnel is changed to “support” personnel, and it is required that such persons only be assigned routine assigned tasks that do not require professional discretion or judgment. It is also stated who can provide supervision to a PT or PTA student in training through an approved program.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term “issues” means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary

advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Advantages to the licensees:

To the extent amended rules on practice and supervision are more precisely stated and more consistent with current standard of care, there may be fewer incidents when licensees have failed to adhere to the standards. Physical therapist assistants can sometimes be placed in a tenuous position by being expected to perform certain functions and assume responsibilities beyond their training and scope of practice. With clearer delineation of the responsibilities of the physical therapist, the assistant will better be able to understand and communicate what his role should be vis-à-vis the treatment of a patient. Licensees who are actively working in the physical therapy field, in an educational, supervisory, administrative or consultant role, will be able to count those activities in order to meet the 160-hour per biennium required for renewal of an active license.

Disadvantages to the licensees:

There are no disadvantages to licensees. There are no new requirements nor has the scope of practice of any licensee been limited in any way. Regulations on practice and supervision are clarifying and consistent with the current expectation and interpretations of the Board and national standards in the field of physical therapy.

Advantages or disadvantages to the public:

There are no disadvantages to the public, but persons receiving physical therapy interventions will be better served by more specifically stated rules on role delineation and supervision. There may be a better understanding by the physical therapist of his responsibility for the ongoing care of the patient, not only for the initial and discharge evaluations. Amended rules on licensure may eliminate some barriers to applicants and result in a very modest increase in access to care.

Advantages or disadvantages to governmental agencies:

There are no advantages or disadvantages to any governmental agency.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Projected cost to the state to implement and enforce:

(i) Fund source: As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$2,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled.

Projected cost on localities:

There are no projected costs to localities.

Description of entities that are likely to be affected by regulation:

The entities that are likely to be affected by these regulations would be licensed physical therapists and physical therapist assistants and those applying for licensure.

Estimate of number of entities to be affected:

Currently, there are approximately 4401 physical therapists and 1,597 physical therapist assistants with current licenses and an unknown number of applicants who will be required to comply with provisions of regulation.

Projected costs to the affected entities:

There would be no costs to the current licensees. Applicants who graduated from non-English approved schools or who are applying for licensure as a PTA would have a new test to pass. An applicant for licensure as a physical therapist who is a graduate of a *non-approved* program is currently required to be certified for licensure by the Foreign Credentialing Commission on Physical Therapy. A part of the certification is passage of the Test of Spoken English. For graduates of *approved* programs outside the U.S. and for applicants for licensure as physical therapist assistants, the same test should be required to ensure that applicants have adequate communication skills to practice. Since there are only a handful of foreign schools in which the primary language is not English, this may only occasionally affect an applicant in Virginia and will increase their cost of qualifying for licensure by \$125, the cost of taking the TSE. Applicants who can provide other evidence of English proficiency can have the test waived.

Applicants who have failed the national examination three times and are seeking to permission to retake the test will have a new requirement of remedial coursework or clinical training in the area or areas of deficiency. That could require completion of a graduation course in a particular area (cost for a graduate credit hour at MCV is \$371. The total cost would depend on the number of hours assigned to a course). However, the cost of remediation is minimal compared

to the cost of a physical therapy education and repeated attempts at passing the national examination – all of which could be for naught with current regulations which forbid licensure of anyone who has failed six times.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

The amended sections are as follows:

18 VAC 112-20-10. Definitions.

Any term already defined in the Code is deleted in the regulations and reference is made to “the words and terms defined in § 54.1-3473.” In addition, the following changes are proposed:

- A new definition of “*active practice*” is needed to explain types of professional practice that would be counted to include supervisory, educational or administrative responsibilities in the practice of physical therapy. The required hours of practice within the two-year time period are not new requirements but restatements of the current language in the renewal section.
- The definition of “*direct supervision*” is revised to clarify that the supervising PT or PTA must be “physically present” rather than telephonically and that he must also be immediately available. Since physical therapist assistants are also able to supervise the activities of unlicensed support personnel, they are added to the definition. As the term is used in the regulation, it is clearly stated whether the PT or both the PT and the PTA are responsible for the direct supervision of physical therapy tasks and activities. This definition is similar to the definition for “on-site supervision” in the Model Practice Act of the Federation of State Boards of Physical Therapy.
- The definition of “*evaluation*” is amended to update the term in its full range of responsibilities. Since an evaluation is the sole responsibility of the PT and cannot be delegated, it is necessary to clarify what that entails. Again, the language is similar to the description of evaluation found in the Model Practice Act.
- A new definition of “national examination” is included, so the term can be generically used in the regulation. The examination of the Federation of State Boards of Physical Therapy is currently the national examination recognized by the Board for licensure.
- The term “nonlicensed” has been changed to “support” personnel to designate those persons who are not licensed to perform functions that fall within the statutory definition of the practice of physical therapy. In many states and in the Model Practice Act, those persons are recognized as physical therapy aides, but there is no such category of regulated persons in Virginia. Allowing support personnel to perform “patient care functions,” as the current definition states, implies that they can engage in some aspect of the practice of physical therapy and has been confusing to licensees. The proposed definition makes it clear that their

practice may include “designated routine tasks related to physical therapy.”

- The definition of a “foreign educated trainee” is amended to clarify that those persons have been educated outside of the United States in a non-approved program. Some persons are educated in a foreign country in an approved program, so the definition is not accurate.
- The definition of an “unlicensed graduate trainee” is amended to clarify that the licensure examination referenced is the “national examination.”
- In the definition of “traineeship,” the term “full-time activity” is deleted and replaced with “active clinical practice,” which is more definitive of the purpose of a traineeship. There was confusion about the meaning of “full-time” and “activity”.
- A definition for the “test of spoken English” is added for the term “TSE.”
- In the definition of “type 2,” the second sentence is deleted as it is descriptive but not definitive.

18 VAC 112-20-20. The reference to Public Participation Guidelines of the Board is deleted as unnecessary. It was included in the physical therapy regulations when the profession was regulated under the Board of Medicine, which has multiple sets of regulations.

18 VAC 112-20-40. Educational requirements; graduates of approved programs.

- The amendment to subsection A is grammatical and not substantive.
- In subsection B, the Board has added a requirement for TSE (Test of Spoken English) for graduates of approved schools located outside the United States or Canada. Foreign graduates, who must be certified by the FCCPT, are required to have both TOEFL and TSE, and the intent is the same for all such applicants – that they have the English language skills to effectively communicate with patients in Virginia. A graduate of an approved program outside the U.S. may have the test waived if he can provide other evidence of English proficiency, such as a letter from his school that classes were taught in English.

18 VAC 112-20-50. Education requirements; graduates of schools not approved by an accrediting agency approved by the board.

- In subsection A, there is a clarification that the documentation of certification needed is in the form of a report from the FCCPT (Foreign Credentialing Commission on Physical Therapy).
- Amendments to subsection B: 1) add a requirement for TSE for physical therapist assistants trained in foreign countries (already required by FCCPT for PT’s) and 2) delete the specific requirements for general and professional education. In lieu of the 65 hours currently required, the scholastic credential service will have to verify that the applicant has the equivalency of an approved PTA program.
- Amendments to subsection C are clarifying; there are no substantive changes. The requirement for a “progress report” is amended to require a clinical performance instrument, which is currently used by the board to evaluate the work of a trainee. It is a standardized format provided by the American Physical Therapy Association.

18 VAC 112-20-60. Requirements for licensure by examination.

For clarity and ease of compliance, the requirements for licensure by examination and licensure by endorsement have been separated into two sections. The passing score on the national examination, now in subsection A of section 60, is currently set in section 65. All states use a cut score of 600 as the passing score of the examination, so the Board did not revise that requirement.

Currently, an applicant who has failed the examination six times is denied licensure (subsection B of section 65). The proposed amendment would remove the absolute prohibition on licensing such a person but adds a requirement for some remediation for a person who has failed three times. After three failures, the applicant would have to apply to the board to sit for a subsequent examination and provide documentation of clinical training or course work in the deficiency areas.

18 VAC 112-20-65. Requirements for licensure by endorsement.

Requirements that are currently stated in section 80 have been moved to section 65, so that the two avenues to licensure – examination and endorsement are sequential in this regulation. The amended regulation would require the applicant to hold a current, unrestricted license in another jurisdiction. Rather than passage of the national examination, the amended requirements would allow an applicant from another state to provide documentation of passage of an examination equivalent to that required in Virginia at the time of initial licensure or if the examinations were not identical, the applicant could be licensed by documentation of passage of the examination required by his state of initial licensure and active practice with an unrestricted license for at least seven years prior to applying for licensure in Virginia.

18 VAC 112-20-70. Traineeship for unlicensed graduate scheduled to sit for the national examination. Changes are editorial and intended to use the term defined in section 10.

18 VAC 112-20-80. Provisions for licensure by endorsement are repealed in this section and included in section 65.

Part III. Practice Requirements. This part of the regulation has been reorganized to set forth the General responsibilities, the Supervisory responsibilities, and the Responsibilities to patients for both physical therapists and assistants.

18 VAC 112-20-90. General responsibilities.

The current requirement to evaluate the patient, document treatment, and communicate the plan of care to the referring doctor has been included in this section and expanded to more fully describe the appropriate role of the PT and the PTA. In the amended language, it is affirmatively stated that the physical therapist is responsible for managing all aspects of patient care. As a part of that responsibility, he must conduct the initial evaluation, a periodic evaluation and an evaluation prior to discharge and document all evaluations in the patient chart. In addition to communicating the overall plan of care to the referring practitioner (including nurse practitioners and physician assistants), he is responsible for communicating the plan to the patient.

The physical therapy assistant can assist in various components of physical therapy care but cannot perform a patient evaluation, which includes development of a plan of treatment interventions. All PTA visits to a patient must be under general supervision, as currently stated in section 120 of these regulations.

18 VAC 112-20-100. Supervisory responsibilities.

Subsection A is amended to add the word “fully” to the responsibility of the PT for any person performing physical therapy functions under his supervision or direction.

Subsection B is amended to clarify that support personnel can perform only routine assigned tasks that are nondiscretionary and do not require the exercise of professional judgment. All such tasks must be under the direct supervision of the PT or PTA.

Subsection C is deleted as unnecessary duplication of language in section 120.

Subsection D (now C) is amended for editorial purposes.

Subsection D is added to clarify that a PT student in an approved educational program must have direct supervision by a physical therapist, and a PTA student must have direct supervision by a physical therapist or a physical therapist assistant.

18 VAC 112-20-110. This section is repealed and the general responsibilities of physical therapist assistants set out in section 90.

18 VAC 112-20-120. Responsibilities to patients.

An amendment will clearly state that it is the responsibility of the PT or the PTA who is providing the care to document the interventions used in the patient’s record. There is also a clarification that the PT must reevaluate a patient *as needed*, but not less than within a prescribed time period and that means once every seven days (rather than once a week) for hospital inpatients. Language was also added to specify that it is the PT’s responsibility to have *ongoing involvement* in the care of a patient, including regular communication with the PTA on the patient’s plan of treatment.

18 VAC 112-20-130. Biennial renewal of license.

Since licenses are renewed every two years, it is confusing to licensees who are required to have 320 hours within a four-year period in order to renew their license. The board determined that it would be clearer to state the requirement as 160 hours of active practice in two years, which is defined as the 24 months immediately preceding renewal.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The issues on which the Board considered alternatives were as follows:

Licensure by examination:

The requirement that the Board has to deny licensure to an applicant who has failed the national examination six times occasionally becomes problematic (one such applicant was denied in Virginia but licensed in another state and then applied for licensure by endorsement). The Board reviewed the requirements of other states and jurisdictions and found that 35 have no limit to the number of times an applicant can sit for the examination (17 deny licensure after two or more failures). They also found that 24 states require some remedial coursework or clinical training prior to sitting for multiple exams (10 states allow two failures before remediation; 14 states allow three failures). The Federation of State Boards of Physical Therapy (FSBPT) leaves it up to the individual states to determine how many times a person can sit for the exam and whether remediation is required following multiple failures. Since the Board's primary concern is for patient safety and minimal competency, it was determined that the limitation would be eliminated but some remediation required in the area of deficiency after three failures.

Licensure by endorsement:

Current regulations contain confusing language on the requirement for an examination. In subsection A of section 80, it states that an applicant must have been licensed by an examination equivalent to the Virginia examination at the time of licensure – but it is not clear whether that means at the time of initial licensure in the other state or equivalent to what is required in Virginia at the time the person is applying for licensure. In subsection B, it clearly states that the applicant must have passed the national examination. Since the national examination by the FSBPT was not offered before 1992, that leaves many potential applicants who were tested before 1992 in another state with the choice of having to take an unnecessary examination or not practicing in Virginia. The Board determined that the least burdensome regulation, consistent with § 54.1-3479, was to require passage of an examination equivalent to what was required in Virginia at the time the applicant was initially licensed in another state. Since Virginia adopted the national examination in 1996, an applicant who took any state examination prior to that year (or a national examination after 1992) would be eligible for licensure.

An alternative to that requirement is also provided, so an applicant who did not pass the equivalent examination but did pass the examination required for initial licensure in another state could be licensed upon documentation that he has been actively practicing for at least seven years. Seven years was chosen because Virginia adopted the national examination seven years ago, but some states continued to license on the basis of their state examination after that date (all states now rely on the national examination). Also, experts from the Federation have told the Board that the validity of an examination to indicate competency in current knowledge of the profession extends for about seven years. After that time, active practice with an unrestricted license is probably a better indicator of competency.

Practice requirements

In the development of definitions for terms such as evaluation and support personnel and in determining appropriate language to specify the roles and responsibilities of all levels of physical therapy personnel, the Board reviewed the Model Practice Act of the FSBPT, which offers guidance for states in the adoption of rules for practice. During its review of this regulation, the Board had heard comment that the active practice requirement for renewal of licensure might be unnecessary now that continuing education had been mandated. However, a representative of

the Federation reported that their studies indicate that the strongest evidence of maintaining continuing competency is active practice in the profession. The Board agreed and decided to retain the requirement of 160 hours of active practice each biennium.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

An announcement of the board's intent to amend its regulations was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the PPG mailing list for the board. Public comment was received until June 18, 2003. During the 30-day comment period, no comments were received from members of the public.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The Board of Physical Therapy, comprised of licensed physical therapists, a licensed physical therapist assistant and a member of the public met to work on draft regulations. In addition, a representative of the Federation of State Boards of Physical Therapy met with the Legislative/Regulatory Committee to communicate information about the Model Practice Act and regulations in other states. The Assistant Attorney General who provides counsel to the Board has been involved during the development and adoption of proposed regulations to ensure clarity and compliance with law and regulation.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Public participation guidelines require the Board to review regulations each biennium or as required by Executive Order. Regulations will be reviewed again during the 2006-07 fiscal year.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability nor will these amendments increase or decrease family income.